

INDUCEMENT RESOLUTION

(2-4 Market Street Corning, LLC)

A regular meeting of the Steuben County Industrial Development Agency was convened on Thursday, September 26, 2019.

The following resolution was duly offered and seconded, to wit:

Resolution No. 09/2019 - 40

RESOLUTION OF THE STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACCEPTING THE APPLICATION OF 2-4 MARKET STREET CORNING, LLC WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW), (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT, (iii) MAKING A DETERMINATION UNDER ARTICLE 8 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW IN CONNECTION WITH THE PROJECT, (iv) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED WITH RESPECT TO THE PROJECT, (v) AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; **PROVIDED THAT NO FINANCIAL ASSISTANCE EXCEEDING \$100,000 SHALL BE PROVIDED TO THE COMPANY UNTIL SUCH TIME AS THE AGENCY HAS (A) HELD A PUBLIC HEARING, (B) ADOPTED A SUBSEQUENT RESOLUTION MAKING ADDITIONAL FINDINGS UNDER SECTION 862 OF THE ACT (AS DEFINED BELOW), AND (C) OBTAINED CONFIRMATION OF THE PROPOSED PROJECT FROM THE CHIEF EXECUTIVE OFFICER OF MUNICIPALITY FOR WHOSE BENEFIT THE AGENCY WAS FORMED.**

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 178 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **2-4 MARKET STREET CORNING, LLC**, for itself or on behalf of an entity to be formed by it or on its behalf (collectively, the "Company"), previously submitted an application (the "Application"), a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project (the "Project"), consisting of: (i) the acquisition by the Agency of a leasehold interest in certain property located at 2-4 Market Street in the City of Corning, Steuben County, New York (the "Land"), and the existing approximately 10,500 square-foot vacant building located thereon formerly known as "Tony R's Steakhouse"

(the "Existing Improvements"); (ii) the renovation of the Existing Improvements for lease to FLX Table, a restaurant group, to be used for (a) retail wine and beer sales, (b) a modern American bistro, and (c) a wood fired grill (collectively, the "Improvements"); and (iii) the acquisition and installation by the Company in and around the Improvements of certain items of equipment and other tangible personal property to undertake the Project (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law, the Agency desires to adopt a resolution describing the Project and authorizing the Financial Assistance with respect to the Project; provided that the Financial Assistance (as defined below) provided to the Company shall not exceed \$100,000 until such time as the agency has held a public hearing and adopted a subsequent resolution; and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate and enter into an project agreement, pursuant to which the Agency will appoint the Company as its agent for the purpose of undertaking the Project (the "Project Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), and payment-in-lieu-of-tax agreement (the "Tax Agreement"), (iii) take a leasehold interest in the Land and the Improvements and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement and Tax Agreement have been negotiated), and (iv) provide Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, and equipping of the Facility, (b) a partial real property tax abatement structured within the Tax Agreement, and (c) a mortgage recording tax exemption for financing related to the Project (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the Company has represented that the predominant purpose of the Project is to make goods or services which would not, but for the Project, be reasonably accessible to the residents of the City of Corning, Steuben County, New York; and

WHEREAS, pursuant to Section 862 of the Act, the Agency may not provide the Financial Assistance to the Company until, following a public hearing held by the Agency, the Agency shall (i) determine that the undertaking of the Project will serve the public purposes of the Act by preserving permanent, private sector jobs in New York State (the "State"), and (ii) obtain the confirming approval of such determination by the chief executive officer of the municipality for whose benefit the Agency was created; and

WHEREAS, the Project Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement, Mortgage and related documents are being negotiated and will be presented to the

Executive Director, Chairman or Vice Chairman of the Agency for execution subject to approval of this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Steuben County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a facility or a commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(F) Based upon the review by the Agency of the Application submitted by the Company with respect to the Project, the Agency finds that the proposed action constitutes a "Type II action" pursuant to 6 N.Y.C.R.R. Part 617.5 and therefore is exempt from review under SEQRA.

Section 2. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

Section 3. Following the public hearing and prior to providing the Financial Assistance to the Company, the Agency shall (i) make certain additional findings under Section 862 of the Act, and (ii) obtain from the chief executive officer of municipality for whose benefit the Agency was formed confirmation of the proposed Project to be undertaken for the benefit of

the Company by the Agency.

Section 4. The Agency is hereby authorized to provide the Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project, (b) a real property tax abatement through the Tax Agreement and (c) an exemption from mortgage recording taxes as authorized by New York law; *provided that no Financial Assistance exceeding \$100,000 shall be provided to the Company until such time as the Agency has (a) held a public hearing, (b) adopted a subsequent resolution making additional findings under Section 862 of the act (as defined below), and (c) obtained confirmation of the proposed project from the chief executive officer of municipality for whose benefit the Agency was formed.* The Agency is authorized to execute and deliver all documents necessary for the provision of the Financial Assistance.

Section 5. Based upon the representation and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately \$900,000, which result in New York State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed \$72,000. The Agency agrees to consider any requests by the Company for an increase to the amount of Sales and Use Tax Exemption Benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 6. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any Sales and Use Tax Exemption Benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the Sales and Use Tax Exemption Benefits; (ii) the Sales and Use Tax Exemption Benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the Sales and Use Tax Exemption Benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on the Application; (v) the Sales and Use Tax Exemption Benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) are hereby defined as a "Recapture Event").

As a condition precedent of receiving Sales and Use Tax Exemption Benefits, real property tax abatement benefits and mortgage recording tax benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any Sales and Use Tax Exemption Benefits, mortgage recording tax benefits and/or real property tax abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 7. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, reconstruct, renovate and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Project Agreement shall expire on April 30, 2020 (*unless extended for good cause by the Executive Director of the Agency*) if the Lease Agreement, the Leaseback Agreement and the Tax Agreement contemplated have not been executed and delivered

Section 8. The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Project Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (D) the Tax Agreement, pursuant to which the Company agrees to make certain payments in lieu of real property taxes and (E) related documents; *provided, however*, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 9. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender/financial institution identified by the Company (the "Lender") up to a maximum principal amount of \$750,000 to undertake the Project, acquire the Facility and/or finance or re-finance equipment and other personal property and related transactional costs (hereinafter, with the Project Agreement, Lease Agreement, the Leaseback Agreement and the Tax Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is

hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and/or Executive Director of the Agency shall approve, with the execution thereof by the Chairman, Vice Chairman and/or Executive Director of the Agency to constitute conclusive evidence of such approval; *provided, however*, in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 11. These Resolutions shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Michael Nisbet	[✓]	[]	[]	[]
Joseph Hauryski	[✓]	[]	[]	[]
Anthony Russo	[]	[]	[✓]	[]
Mark Alger	[✓]	[]	[]	[]
Christine Sharkey	[✓]	[]	[]	[]
Michael Doyle	[✓]	[]	[]	[]
Dean Strobel	[✓]	[]	[]	[]

The Resolutions were thereupon duly adopted.

EXHIBIT A

Notice Documents

[See Attached]

SECRETARY'S CERTIFICATION
(2-4 Market Street Corning, LLC)

STATE OF NEW YORK)
COUNTY OF STEUBEN) SS.:

I, the undersigned, Secretary of the Steuben County Industrial Development Agency DO
HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Steuben
County Industrial Development Agency (the "Agency"), including the resolution contained
therein, held on September 26, 2019, with the original thereof on file in the Agency's office, and
that the same is a true and correct copy of the proceedings of the Agency and of such resolution
set forth therein and of the whole of said original insofar as the same related to the subject
matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting,
that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public
Officers Law (Open Meetings Law), said meeting was open to the general public, and that public
notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present
throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force
and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
Agency this 26th day of September, 2019.


Secretary

